EMTALA AND EMS

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I am NOT a lawyer.

This talk does not constitute legal advice.
The decedent came to the hospital ED with family members, complaining of chest pain. Upon registration, hospital employees learned she was a member of an HMO. The patient waited all afternoon in the waiting room, while other patients with minor problems later came and left the ED after receiving treatment. Finally, late in the afternoon, a family member took her to the HMO office where she suffered a cardiac arrest and died.

What did the court find?
The decedent came to the hospital ED with family members, complaining of chest pain. Upon registration, hospital employees learned she was a member of an HMO. The patient waited all afternoon in the waiting room, while other patients with minor problems later came and left the ED after receiving treatment. Finally, late in the afternoon, a family member took her to the HMO office where she suffered a cardiac arrest and died.

The court held the hospital violated EMTALA by delaying the patient’s screening exam after learning about her insurance. The delay was so egregious that it effectively qualified as a refusal to treat.
The decedent, a one month old female, had a cardiac arrest five blocks from the defendant hospital. By telemetry, a nurse told EMS to take the patient to another hospital, as the hospital was on diversion. The patient died.

What did the court find?
The decedent, a one month old female, had a cardiac arrest five blocks from the defendant hospital. By telemetry, a nurse told EMS to take the patient to another hospital, as the hospital was on diversion. The patient died.

The court held the patient never “came to” the defendant hospital, therefore no EMTALA violation occurred.
WHAT IS EMTALA?

- Emergency
- Medical
- Treatment
- And
- Labor
- Act
DUTIES CREATED UNDER EMTALA

- **Screening Examination**: If any individual...comes to the emergency department and a request is made on the individual’s behalf for examination or treatment of an emergency medical condition, the hospital must provide for an appropriate medical screening examination within the capability of the hospital’s emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition...exists.

- 42 U.S.C. §1395dd(a)
EMERGENCY MEDICAL CONDITION

- Acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in – (i) placing the health of the individual in serious jeopardy, (ii) serious impairment of bodily functions, or (iii) serious dysfunction of any bodily organ or part; or with respect to a pregnant woman who is having contractions – (i) that there is inadequate time to effect a safe transfer to another hospital before delivery, or (ii) that transfer may pose a threat to the health or safety of the woman or the unborn child.

- 42 U.S.C. §1395dd(e)(1)
STABILIZATION

- Defined: to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer.

- The duty to stabilize arises when the screening exam reveals an emergency medical condition.

- Once stabilized, the hospital and physician have fulfilled their duties arising under EMTALA.

- The duties are also fulfilled if the patient refuses further examination or transfer.

- 42 U.S.C. §1395dd(e)(3)
EMTALA does not provide transfer regulations for stable patients. The transfer regulations only apply to unstable patients.

Appropriate transfers of unstable patients:
- Patient or family request
- Physician signs certification that benefits outweigh risks
- That transfer is performed appropriately
  - Transferring hospital provides medical treatment within its capabilities
  - The receiving facility has (1) available space and qualified personnel to treat the individual and (2) has agreed to accept the transfer
  - The transferring hospital sends all medical records related to the emergency condition for which the individual presented, that were available at the time of transfer. This specifically includes all consents. The name of any on-call physician who refused or failed to appear must be included.
- Qualified personnel and transportation equipment
Transfer is effected through qualified personnel and transportation equipment, as required, including the use necessary and medically appropriate life support measures during transfer.

- EMTs may not always be “qualified personnel”
- May require presence of a physician or specialist
- The physician at the sending hospital is responsible for determining the appropriate mode, equipment, and attendants for transfer
UPDATES TO EMTALA

• Administrative updates occur every few years
  • 1994 – DHHS may fine receiving hospitals if they do not report known violations within 72 hours
  • 1994 – EMTALA may apply to hospitals that have no ED
  • 1994 – “Comes to” means that patient has arrived on hospital property
  • 1998 – Bad clinical outcome ≠ inappropriate MSE
  • 1998 – MSE can occur anywhere on the hospital campus
  • 2000, 2003 – “hospital” includes the driveway, sidewalk and parking lots
  • 2003 – A facility qualifies as a DED if (1) it is licensed by a state as an ED, or (2) it holds itself out to the public as providing emergency care, or (3) during the preceding year, 1/3 of outpatient visits were for EMCs
  • 2003 – CMS will not levy EMTALA sanctions during a national emergency
UPDATES TO EMTALA

- Administrative updates occur every few years
  - 2000 – “comes to”
    - includes off-campus facilities (satellite clinics)
    - includes the hospital driveway, sidewalk, and parking lots
    - Includes all hospital buildings within a 250 yard radius of the hospital’s main building
  - 2003 – Hospital owned ambulances
    - EMTALA not triggered when the patient enters the ambulance if the ambulance functions as part of a community-wide EMS system (i.e.: this negates the old Regulation which stated that patients entered the ED when they entered such an ambulance)
    - “Ambulance” now specifically includes air ambulances
EMS ASPECTS OF EMTALA

- Hospitals may attempt to divert patients, but if an ambulance disregards and brings the individual onto hospital grounds, they are considered to have come to the hospital.
- You have **no obligation** to abide by a hospital’s request for you to divert.
HELICOPTER RENDEZVOUS

- Use of a hospital’s helipad for rendezvous does not create an EMTALA obligation for that hospital as long as no request is made for services.
The defendant hospital admitted the patient for psychotic and “threatening” behavior. A psychiatrist wrote a progress note accepting the patient on a psychiatric ward “if [patient]’s insurance will accept criteria.” The hospital then promptly discharged the patient and he murdered his wife.

What did the court find?
The defendant hospital admitted the patient for psychotic and “threatening” behavior. A psychiatrist wrote a progress note accepting the patient on a psychiatric ward “if [patient]’s insurance will accept criteria.” The hospital then promptly discharged the patient and he murdered his wife.

The court declared that EMTALA applies to inpatients, and invalidated the CMS Regulation stating otherwise.
PRESTON V. MERITER HOSPITAL, 700 N.W. 2D 158 (WIS. 2005)

• After birth in the defendant’s labor and delivery room, the baby went to the nursery, and then the critical care nursery. The following day he was transferred to another hospital after vomiting blood. He died soon after arrival at the receiving hospital. The court held the baby “came to” the hospital at birth.

• What did the court find?
After birth in the defendant’s labor and delivery room, the baby went to the nursery, and then the critical care nursery. The following day he was transferred to another hospital after vomiting blood. He died soon after arrival at the receiving hospital. The court held the baby “came to” the hospital at birth.

The court ignored the 2003 CMS Regulations stating that EMTALA did not apply to inpatients. The court refused to dismiss the plaintiff’s claims on summary judgement.
MORGAN V. MISSISSIPPI MEDICAL CENTER, 403 F. SUPP. 2D 1115 (S.D. ALA. 2005)

- A hospital may have liability for failure to stabilize an admitted patient, if it admitted the patient merely as a subterfuge to avoid liability.
A patient has a cardiac arrest 20 minutes after arriving in the ED waiting room. The clerk merely asked about insurance just prior to the patient's cardiac arrest.

What did the court find?
A patient has a cardiac arrest 20 minutes after arriving in the ED waiting room. The clerk merely asked about insurance just prior to the patient’s cardiac arrest.

The court dismissed the plaintiff’s claims on summary judgement.
The plaintiff got admitted through the ED to rule out a pulmonary embolism. The hospital ran out of isotope for a V/Q scan. The patient laid in the ED all night, then went to the ICU early the next morning. The plaintiff alleged an EMTALA violation based on failure to stabilize.

What did the court find?
The plaintiff got admitted through the ED to rule out a pulmonary embolism. The hospital ran out of isotope for a V/Q scan. The patient laid in the ED all night, then went to the ICU early the next morning. The plaintiff alleged an EMTALA violation based on failure to stabilize.

A hospital may violate the stabilization requirement if it admits a patient through the ED. In this case, the “failure to stabilize” claim was based on (1) lack of availability of isotope for V/Q scan, and (2) seven hour delay in admission.
A hospital may violate the stabilization requirement if it admits a patient through the ED. In this case, the “failure to stabilize” claim was based on (1) lack of availability of isotope for V/Q scan, and (2) seven hour delay in admission.

Reheard by the 11th Circuit en banc (a panel of nine judges)

In a case of first impression, the Court stated that the duty of stabilization under EMTALA only arises in cases where a transfer occurs. Otherwise, an allegation of improper stabilization is really an allegation of negligence.
The decedent sustained severe burns when his car exploded. The defendant hospital transferred him to a distant burn center. He has respiratory difficulties en route requiring EMS to divert to a nearby hospital for intubation. The patient later died.

What did the court find?
SMITH V. JAMES, 895 F. SUPP. 875 (S.D. MISS. 1995)

- The decedent sustained severe burns when his car exploded. The defendant hospital transferred him to a distant burn center. He has respiratory difficulties en route requiring EMS to divert to a nearby hospital for intubation. The patient later died.

- The court denied the hospital’s motion for summary judgement because the plaintiffs stated a cause of action under EMTALA, as they alleged the hospital should have transferred the patient by helicopter.
WHO IS RESPONSIBLE FOR A PATIENT WHO DETERIORATES IN TRANSPORT?

- Sending physician
- Receiving physician
- EMS physician
The transferring physician has the primary responsibility if a patient deteriorates during transfer.

“The treating physician at the sending hospital is responsible for assessing the patient condition, ascertaining need for transfer and determining a safe mode of relocation to the receiving care center. The receiving physician is mainly responsible for ensuring his or her institution’s ability to provide the level of care requested.”

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